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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 800

BEN W. FORTSON, JR., Individually, and as Secretary of State of Georgia, *Appellant,*

v.

LARRY G. JUSTICE, MRS. A. P. BEALL, MRS. VIRGINIA BUDD, DR. YANCEY F. CARTER, JR., NOBLE F. COLLINS, GLEA GRAY, BRYAN HURST, DR. BENJAMIN E. MAYS, CARL PORTER, CHARLES SLIGH, DR. HERBERT TYLER, and EVERETT WILLIAMS, *Appellees.*

Appeal from the United States District Court
For the Northern District of Georgia
Atlanta Division

BRIEF ON BEHALF OF APPELLEES, JUSTICE, et al.

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QUESTIONS PRESENTED

The decision of the District Court presents a pressing question of paramount importance—whether the people of Georgia, having failed to cast a majority of their ballots for a single candidate in the November 8 general election for Governor of Georgia, can constitutionally be deprived of the opportunity to elect the Governor of Georgia in a runoff election as provided by

Section 34-1514 of the 1964 Georgia Election Code. The appellant asserts that this crucial choice of the Chief Executive of the State has been taken from the people and placed in the General Assembly by the provisions of an 1824 amendment to the Georgia Constitution. The District Court held this provision of the Georgia Constitution to be unconstitutional under the decision of this Court in *Gray* v. *Sanders,* 372 U.S. 368 (1963), and enjoined the selection of the Governor by the General Assembly. This decision of the District Court is plainly correct and should be summarily affirmed by this Court.

STATEMENT OF THE CASE

This is an appeal from a decision of a three-judge United States District Court for the Northern District of Georgia rendered on November 17, 1966 (R. 226-32), declaring unconstitutional and enjoining (R. 233) the enforcement of a provision first appearing as an 1824 amendment of the Georgia Constitution authorizing the election of the Governor of Georgia by the General Assembly when no candidate has received a majority of the total votes cast in the general election as required by the Georgia Constitution. Ga. Const., art. V, § I, para. IV.

This action (R. 106) was brought by a group of citizens of Georgia residing in counties through the State who voted in the November 8, 1966 general election for Governor to secure for themselves and the people of Georgia the basic right to make the final selection of the Governor of Georgia in a direct popular election as provided by the General Assembly of Georgia in Section 34-1514 of the Georgia Election Code of 1964 which provides:

Majority vote required to nominate or elect; exception; runoff primary or election.—No candidate shall be nominated for public office in any primary or elected to public office in any election unless such candidate shall have received a majority of the votes cast to fill such nomination or public office. In instances where no candidate receives a majority of the votes cast, a runoff primary or election shall be held, between the two candidates receiving the highest number of votes, on the fourteenth day after the day of holding the first primary or election, unless such runoff date is postponed by court order. The candidate receiving a majority of the votes cast in such runoff primary or election to fill the nomination or public office he seeks shall be declared the winner. Only the electors entitled to vote in the first primary or election shall be entitled to vote in any runoff primary or election resulting therefrom; provided, however, that no elector shall vote in a runoff primary in violation of Section 34-624. . . . Ga. Code Ann. § 34-1514 (Ga. Laws 1964, Extra. Sess., pp. 26, 174-75).

Georgia is one of the few[1] states which require the election of her Chief Executive by a majority, rather than a plurality, of the votes cast in the general election. Ga. Const., art. V, § I, para. IV. In the November 8, 1966 general election, however, no candidate for Governor of Georgia received a majority of the total votes cast in the general election. The results were as follows (R. 142, 157, 180):

[1] See, e.g., Vermont Const., ch. II, § 39.

Candidate	Total Votes	Percentage
Howard H. Callaway	449,894	47.07%
Lester G. Maddox	448,044	46.88%
Ellis G. Arnall	57,832	6.05%
Total Votes Cast	955,760	

The only obstacle to the election of the Governor by the people of Georgia in a runoff election is the provision of the Georgia Constitution which was initially adopted in 1824[2] and which provides:

> How returns published.—The members of each branch of the General Assembly shall convene in the Representative Hall, and the President of the Senate and Speaker of the House of Representatives shall open and publish the returns in the presence and under the direction of the General Assembly; and the person having the majority of the whole number of votes, shall be declared duly elected Governor of this State; *but, if no person shall have such majority, then from the two persons having the highest number of votes, who shall be in life, and shall not decline an election at the time appointed for the General Assembly to elect, the General Assembly shall immediately, elect a Governor viva voce; and in all cases of election of a Governor by the General Assembly, a majority of the members present shall be necessary to a choice.* Ga. Const., art. V, § I, para. IV. (Emphasis supplied.)[3]

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[2] McElreath, A Treatise on the Constitution of Georgia §§ 84, 423 (1912).

[3] The District Court held the italicized portions of the Georgia Constitution to be invalid. (R. 229-31)

On October 21, 1966, the Attorney General of Georgia rendered an official opinion (R. 142, 145-48, 179) stating the provisions of Section 34-1514 of the Election Code to be in conflict with the provisions of the Georgia Constitution quoted above and to be controlled by the latter in the event no candidate for Governor received a majority in the general election.

The Malapportionment of the General Assembly

When the General Assembly convenes in January 1967, there will be substantial disparities in the apportionments of both the House and Senate. Under the present apportionment of the House, a mere 42 per cent of the population, based on the 1960 United States Census, controls an absolute majority of the 205 House seats. Almost three-fourths of the House districts deviate more than 10 per cent from average, more than one-half of the districts deviate more than 15 per cent from average, while more than one-third of the House districts deviate from average by more than 20 per cent. These disparities, together with the disparities based on the 1965 census as projected by the Georgia Department of Public Health (GDH), are summarized in the following table and are more fully reflected in Appendix *B*.[4]

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[4] The statistics for 1960 are from tables appearing at R. 143, 158-74, and 180. The statistics for 1965 are based on estimates from information compiled by the Georgia Department of Public Health appearing at R. 143, 175-77, 180. This statistical information is summarized in Appendix *B*, *infra*.

HOUSE OF REPRESENTATIVES

	1960 Census	1965 (GDH)
Population Having Control	42.3%	41.2%
Ratio of Largest District to Smallest	1.97:1	2.61:1
Number of Representatives in Most Over-Represented Districts Having 20% of Population	54	56
Number of Representatives in Most Under-Represented Districts Having 20% of Population	34	30

Similar disparities also exist under the 1962 apportionment of the Senate and are summarized in the table below:

SENATE

	1960 Census	1965 (GDH)
Percentage of Population Having Control	48.2%	46.6%
Ratio of Largest District to Smallest	1.81:1	1.86:1
Number of Senators in Most Over-Represented Districts Having 20% of Population	12	13
Number of Senators in Most Under-Represented Districts Having 20% of Population	9	9

In *Toombs* v. *Fortson*, 241 F. Supp. 65 (N.D. Ga. 1965), the District Court found the apportionment of both the House and the Senate to be unconstitutional under the decision of this Court in *Reynolds* v. *Sims*, 377 U.S. 533 (1964). It said:

> The present plan of Senate apportionment in Georgia and the proposed plan of apportionment for the House of Representatives [effected in 1965], separately and collectively, fall short of the mandate of the equal protection clause of the Fourteenth Amendment as construed by the Supreme Court in Reynolds v. Sims and related cases, supra. . . . 241 F. Supp. at 73.

The District Court refused, however, to require immediate reapportionment and approved the continuation of the General Assembly on its present basis until the 1969 session. *Ibid.* This Court affirmed the District Court's ruling. *Toombs* v. *Fortson,* 384 U.S. 210 (1966) (per curiam).

The 1966 Elections

On September 14, 1966, the Georgia Democratic Party conducted a primary election for nominees for Governor of Georgia among six candidates. (R. 141, 179). Although Ellis Arnall and Lester Maddox were the two candidates receiving the highest number of votes, neither received a majority as required by Section 34-1514 of the Georgia Election Code. (R. 141, 179). On September 28, 1966, the Democratic Party held a runoff primary as required by Section 34-1514 in which more than 800,000 people participated. Lester Maddox received a majority of 70,051 votes and thus became the Democratic nominee for Governor. (R. 141-42, 179).

The Democratic Party also conducted a primary election for nominees for the House of Representatives and Senate of the General Assembly. (R. 142, 179). As a condition of participation in the Democratic primary, each candidate for the General Assembly was required to execute a Declaration of Candidacy (R.

142, 149, 150, 179) in which he pledged his support of "the nominee of the Democratic Party." (R. 149-50). In the ensuing general election, 183 Democrats and 21 Republicans were elected to the 205-member House. (R. 143, 180). No candidate received a majority in one House district, and a runoff was held on November 22, 1966, between the two candidates receiving the highest number of votes in the general election pursuant to Section 34-1514 of the Election Code. Forty-six Democrats, 7 Republicans and one independent were elected to the Georgia Senate. (R. 143-44, 180).

The name of Howard H. Callaway was placed on the general election ballot as the nominee for Governor of the Georgia Republican Party by petition of at least five per cent of the total number of eligible voters in Georgia as provided by Section 34-1010 of the Election Code. Ga. Code Ann., § 34-1010 (Ga. Laws 1964, Extra. Sess., pp. 26, 93-95). (R. 142, 179).

SUMMARY OF ARGUMENT

The Georgia Constitution places the election of the Governor of Georgia on a popular basis. Having placed the election of Governor on a popular basis, the State is prohibited from employing any device, whether a county unit system based on legislative seats, or a more direct method of selection by the legislators themselves, which dilutes, distorts or disregards the votes of any of its citizens. *Gray* v. *Sanders*, 372 U.S. 368 (1963).

The 1824 amendment to the Georgia Constitution which provides for the final selection of the Governor of Georgia directly by the legislators results in an unconstitutional weighting and distortion of the popular votes cast in the general election and, thus, violates the Equal Protection Clause. Since each vote of each legis-

lator is indivisible it must be cast as a unit and cannot therefore adequately reflect the will of a portion of his constituency, whose wishes will thereby be disregarded in the selection of their Chief Executive. *Gray* v. *Sanders, supra,* at 381 n. 12. Further, the Georgia Constitution imposes no obligation upon a legislator, in selecting the Governor, to obey the wishes expressed by a plurality or even a majority of his constituency and thus is even more objectionable in a constitutional sense than a unit formula recognizing the plurality or majority vote. Although these constitutional infirmities would exist even if the General Assembly were fairly apportioned, they are aggravated by the substantial disparities existing in the present apportionment of both houses of the General Assembly which deprive voters in many areas of the state of an equal voice in the selection of their Governor. *Cf. Reynolds* v. *Sims,* 377 U.S. 533 (1964). They are further aggravated by the pledge of the large majority, 88.4 per cent, of the General Assembly to support the nominee of their Party. Whether considered separately or in concert, these factors require that the provision of the Georgia Constitution, providing for the final selection of the Governor of Georgia by the legislature rather than by the people, be held by this Court to be violative of the Fourteenth Amendment. Once the obstacle of this provision has been removed, a runoff election for Governor of Georgia can then be held in the manner prescribed by the General Assembly in Section 34-1514 of the Election Code. A runoff to secure a majority vote is traditional in Georgia and can be held in this instance, at direction of the Court and in accordance with Georgia law, without difficulty or further delay.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY HELD THE PROVISION OF THE GEORGIA CONSTITUTION, WHICH DEPRIVES THE PEOPLE OF THE RIGHT TO MAKE THE FINAL SELECTION OF THEIR GOVERNOR AND WHICH PLACES THE CRUCIAL CHOICE IN THE HANDS OF THE MALAPPORTIONED GENERAL ASSEMBLY, TO VIOLATE THE FOURTEENTH AMENDMENT.

The right of the people of Georgia to elect their Governor is established by and pervades the Georgia Constitution. Ga. Const., art. V, § I, paras. II, IV.[5] Having placed the election of the Governor of Georgia on a popular basis, the State is prohibited from thereafter employing any device, whether a county unit system based on legislative seats, or a more direct method of selection by legislators themselves, which in any way dilutes, distorts or disregards the vote of any citizen. Thus, as this Court emphasized in *Gray* v. *Sanders,* 372 U.S. 368 (1965),

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[5] Ga. Const., art. V, § I, para. II, provides that the Governor shall be elected "in the manner prescribed for the election of members of the General Assembly, and the electors shall be the same."

The Bill of Rights of the Georgia Constitution provides:

> All government of right originates with the people, is founded upon their will only and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people, and at all times, amenable to them. Ga. Const., art. I, § I, para. I.

And see Section V of the Bill of Rights. Ga. Const., art. I, § V, para. I. As the Supreme Court of Georgia emphasized in *Thompson* v. *Talmadge,* 201 Ga. 867, 883, 41 S.E. 2d 883, 896 (1947), it was "the very definite and clear intention [of the Georgia Constitution] that in every case the matter of electing a Governor must be as completely as possible governed by the expressed choice of the people. . . ."

> The only weighting of votes sanctioned by the Constitution concerns matters of representation, such as the allocation of Senators irrespective of population and the use of the electoral college in the choice of a President. . . . But once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded. . . .
>
> The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth and Nineteenth Amendments can mean only one thing —one person, one vote. *Id.* at 380-81.

It is clear that these principles are violated by the provisions of the Georgia Constitution which seek to take from the people of Georgia the right to elect their Chief Executive, when no candidate receives a majority in the general election, and to place the power of final selection of the Governor in the hands of the malapportioned General Assembly. *Gray* v. *Sanders, supra; cf. Reynolds* v. *Sims,* 377 U.S. 533 (1964). *Baker* v. *Carr,* 369 U.S. 186 (1962). The District Court held that the final selection of the Governor by the General Assembly, rather than by the people of Georgia, results in an arbitrary weighting of the votes cast in the general election in which the popular will, as expressed in the general election, may be totally disregarded. (R. 229-30). It thus held the election of the Governor by the General Assembly to be prohibited by the Equal Protection Clause and the decision of this Court in *Gray* v. *Sanders.* (R. 230).

In *Gray* v. *Sanders,* this Court held that the weighting of the votes of citizens participating in primary elections for nominees for Governor of Georgia in proportion to their representation in the lower House of the General Assembly to violate the Equal Protection

Clause of the Fourteenth Amendment. Under the Georgia county unit system, the unit votes were distributed among the various counties of the State based upon their respective representations in the House of Representatives of the Georgia General Assembly which was then apportioned on an arbitrary 3-2-1 system. In all primary elections for Governor, Senator and other statewide officers, each candidate received the *entire* unit vote of each county which he carried. Although this Court, in invalidating the unit system, placed principal reliance upon the gross disparities which existed under the unit system, it also emphasized that any unit system of nominating a Governor would be unconstitutional even if the units had been allocated strictly in accordance with population, since a prohibited weighting of votes would continue. The distortion and weighting of the popular vote resulting from such a unit system was emphasized by Mr. Justice Douglas:

> The county unit system, even in its amended form . . . would allow the candidate winning the popular vote in the county to have the entire unit vote of that county. *Hence the weighting of votes would continue, even if unit votes were allocated strictly in proportion to population.* Thus, if a candidate won 6,000 of 10,000 votes in a particular county, he would get the entire unit vote, the 4,000 other votes for a different candidate being worth nothing and being counted only for the purpose of being discarded. 372 U.S. at 381 n.12. (Emphasis supplied.)

The same considerations which led this Court to invalidate the Georgia county unit system also require the invalidation of the provisions of the Georgia Constitution seeking to authorize the selection of the Governor by the legislature. The constitutional man-

date cannot be evaded merely by the substitution of legislators for the county units. Any exception to the constitutional principles of *Gray* v. *Sanders* to permit the final selection of the Governor of Georgia by the General Assembly would merely stand as a challenge to the ingenuity of those who would seek to evade the mandate of the Equal Protection Clause and thus to frustrate the properly expressed will of the people.

Indeed, the election of the Governor of Georgia by the General Assembly, rather than by the people of the State, is even more clearly violative of the Fourteenth Amendment than was the county unit system. Unlike the county unit system, which operated only at the *preliminary* nominating stages of the election, the Georgia constitutional provision operates only at the crucial *final* stage of the election process by placing the ultimate power of election of the Governor in the General Assembly, if no candidate receives a majority in the general election. And under the unit system, the entire unit vote of a county went automatically to the candidate who received a plurality in that county.

Each legislator would have but a single vote in the election of the Governor, and thus would vote as a unit, and necessarily disregard some of the votes of his constitutents. Recognizing this, the District Court stated:

> [E]ach legislator would stand as a unit in selecting the Governor, and his vote would necessarily eliminate the will of his constituents who voted for the other candidate. (R. 230).

Even though the members of the General Assembly, in choosing the Governor, might vote as did their respective constituencies, the evils inherent in a county unit system of election would nevertheless be present.

Thus, in Cobb County, in which Callaway received a bare plurality of 14,947 votes over the 14,692 votes cast for Lester Maddox, (R. 142, 152, 180) Callaway would receive the entire vote of the 7-member Cobb legislative delegation. The votes of more than 14,000 other people in Cobb County who voted for Lester Maddox would be effectively disregarded, or perhaps more accurately, treated as if they had been cast for the prevailing candidate, Callaway. Such a unit system necessarily results in a weighting and distortion of the votes cast for different candidates and in different areas of the State, which the Constitution prohibits. The consequences of the unit vote become even more apparent on a statewide basis. If, in choosing the Governor, each Senator and Representative voted for the candidate receiving a plurality of the votes cast in his district, Lester Maddox would receive a clear majority of 54 per cent of the votes in the legislature, even though he received a lesser number of popular votes than did Callaway, See Appendix *C, infra.*

Furthermore, the system for election of the Governor by the General Assembly, invalidated by the court below, has even more serious constitutional infirmities than the county unit system considered in *Gray* v. *Sanders* for another reason. A legislator would not be bound by the vote of a plurality or majority of his constituents. An individual legislator could disregard the wishes of the citizens of his district who may have voted overwhelmingly for a particular candidate, and could vote for the candidate receiving the smaller number of votes in the general election. Thus, there could be no assurance that a choice of even an overwhelming plurality of the people of this State would be respected by the General Assembly in its selection of the Governor. This fact was emphasized by the District Court

in holding the provisions of the Georgia Constitution to be unconstitutional.

> The Georgia election system in the constitutional provision now under consideration permits unequal treatment of the voters within the class of voters selected, and it cannot stand. Many arguments may be made, but we need go no further than to point out, as stated, that the candidate receiving the lesser number of votes may be elected by the General Assembly. This would give greater weight to the votes of those citizens who voted for this candidate and necessarily dilute the votes of those citizens who cast their ballots for the candidate receiving the greater number of votes. The will of the greater number may be ignored. . . . (R. 229-30).

This situation is further aggravated by the fact that all Democratic legislators, 229 out of 259, were required, as a condition of their participation in the Democratic primary, to pledge themselves to support the rules of the Democratic Executive Committee which include a requirement that they "support the nominee of the Democratic Party." (R. 148-49, 179). The validity of this rule is questionable as well as the degree of "support" required by it. Nonetheless it is considered by many to be binding, certainly in conscience, and to require, at the least, that the person taking it not vote for or support any nominee of the opposing party.[6] Thus the nine Democratic legislators from DeKalb County may very well feel obliged to vote for Lester Maddox, or possibly to refrain from

[6] The extent to which the pledge may bind the conscience of a legislator was dramatically illustrated in Georgia by the withdrawal from the general election of a Democratic Congressman who would not remain a candidate subject to the obligation to support the party nominee.

voting, in the General Assembly even though the people of DeKalb County voted overwhelmingly for Howard Callaway (R. 142, 152, 180).

This requirement thus taints the entire legislative election process and makes a fair selection by the members of the General Assembly impossible.

A. The Inequities Inherent In a Unit System of Election Are Greatly Aggravated by the Malapportionment of Both Houses of the General Assembly.

The extent to which the votes would be weighted and the will of the majority be disregarded in any election of the Governor by the General Assembly becomes even more apparent when its existing apportionment is considered.[7] Under the existing apportionment of the Georgia House, a mere 42 per cent of the population, under the 1960 United States Census, can elect an absolute majority of its 205 members. Based on the United States Census of 1960, more than two-thirds (143) of its members are elected from districts which deviate more than 10 per cent from average; almost one-half (96) are elected from districts which deviate more than 15 per cent, and more than one-third, or 71 representatives, are elected from districts which deviate more than 20 per cent from average. The largest house district has more than twice the population of the smallest. The disparities existing in the 54-seat Senate, while somewhat smaller, are equally invalid.

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[7] Even under an apportionment of districts within 15 per cent of average, 43.7 per cent of the population can control an absolute majority of legislative seats. See Dixon, *Reapportionment in the Supreme Court and Congress: Constitutional Struggle For Fair Representation,* 63 Mich. L. Rev. 209, 215 (1964). While such disparities may be acceptable for purposes of legislation, they are not acceptable in the election of a Governor to represent all the people of the State.

Toombs v. *Fortson*, 241 F. Supp. 65 (N.D. Ga. 1965), *aff'd per curiam*, 384 U.S. 210 (1966). The disparities are even more extreme under the 1965 population estimates of the Georgia Department of Public Health. Thus, the largest house district now exceeds the smallest by more than 2.6 to 1, while the largest Senate district is now 1.86 times larger than the smallest. See Appendix *B, infra.*

When coupled with the unit rule of election, these disparities serve to distort still further the respective weights of votes cast in different counties. DeKalb County, for example, was carried by Howard Callaway by a margin of more than 2 to 1, 52,840 votes for Callaway as against 24,064 for Maddox. (R. 142, 152, 180). Yet, because DeKalb County is one of the most underrepresented areas in the State in both the House (-45%) and the Senate (-48%), the strength of this victory would be diminished in any election by the General Assembly. See Appendix *B, infra.* The converse also exists with respect to the weight of votes cast for the losing candidate in the overrepresented areas of the State. In Bulloch County, which is overrepresented by 44% in the House, not only would the votes cast for the losing candidate not be counted with votes cast in other areas, the effective weight of the votes cast for the prevailing candidate in Bulloch County would be exaggerated because of the county's overrepresentation, in any legislative selection of the Governor. See Appendix *B, infra.*

B. The Desire of the State to Elect Its Chief Executive by Majority Vote Does Not Justify Taking Away the Right of the People to An Equal Voice in the Selection of Their Governor, When Majority Support Can Be Achieved by Less Drastic Means Not Restrictive of Appellees' Rights.

The principal justification which has been offered by the State for the provision of the Georgia Constitution providing for the election of the Governor by the General Assembly, and indeed the only circumstance bringing these provisions into operation, is the desire of the State to select its Chief Executive by majority vote. The means selected by the Georgia Constitution are particularly inappropriate to achieve majority support for the Governor since, as previously noted and as emphasized by the District Court, the legislature is under no obligation to select the candidate having the highest number of popular votes in the general election.

This Court has repeatedly recognized that the means adopted by the State, as well as the ends, must be legitimate and must, so far as possible, be made to accommodate and not to infringe the basic rights of the people. See *Talley* v. *California,* 362 U.S. 60 (1960); *Dean Milk Co.* v. *City of Madison,* 340 U.S. 349, 354 (1951); *Thornhill* v. *Alabama,* 310 U.S. 88, 95-96 (1940). Indeed, Mr. Justice Stewart emphasized in *Shelton* v. *Tucker,* 364 U.S. 479 (1960):

> In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose. *Id.* at 488.

And as Mr. Justice Brandeis observed, concurring in *Whitney* v. *California* 274 U.S. 357 (1927), an otherwise legitimate "measure may be unconstitutional merely because the remedy, although effective as means of protection, is unduly harsh or oppressive." *Id.* at 377.

These decisions make clear the fact that even a legitimate desire on the part of the State to require a majority vote in the election of her Governor does not justify a denial of the basic rights of the citizens of Georgia to participate in the final election of their Chief Executive when majority rule may be accomplished more effectively by less drastic means. Indeed, the General Assembly, in adopting Section 34-1514 of the Election Code, has provided a less restrictive alternative which will insure that the next Governor of Georgia will enjoy the strength of popular support, without any invasion or denial of the basic right of the people of Georgia to select their Governor.[8] Thus, even if the State constitutional provision were otherwise valid, its unnecessary infringement of the right of the people of Georgia to vote in the final selection of their Governor requires its invalidation by this Court. *Shelton* v. *Tucker, supra.*

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[8] The unnecessary encroachment upon the doctrine of separation of powers expressed in the Georgia Constitution which would result from the selection of the Governor by the legislature would also be avoided. See Ga. Const., art. I, §1, para. XXIII.

II. THERE ARE NO LEGAL OBSTRUCTIONS TO THE ORDERLY CONCLUSION OF THE POPULAR ELECTION OF THE GOVERNOR OF GEORGIA BY A RUNOFF WHICH JUSTIFY A DENIAL OF EQUAL PROTECTION BY PERMITTING THE GENERAL ASSEMBLY TO ELECT THE GOVERNOR.

The appellant has urged that Article V, Section I, Paragraph IV of the Georgia Constitution of 1945 must not be declared invalid, because it provides the only legal and practical method of electing a Governor. Apart from the obvious irrelevance of this consideration to the fundamental question of the legality of the part of Article V, Section I, Paragraph IV which the District Court held invalid, the appellees submit that the Georgia Election Code provides a simple, orderly and traditional means for the completion of the election process, namely a runoff between the two candidates who received the highest number of votes. The only obstruction to the runoff has been the archaic constitutional provision invalidated by the court below. With this removed, there can be an orderly conclusion to the popular election without the problems conceived of by the appellant.

A. The Georgia Election Code Provides for a Runoff Under Present Circumstances.

The unqualified, unambiguous language of Section 34-1514 of the Georgia Election Code requires a runoff between the two candidates who received the highest number of votes at the polls on November 8, 1966, Lester G. Maddox and Howard H. Callaway. The General Assembly must be taken to have meant what it said, namely, that

> No candidate shall be nominated for public office *in any primary* or elected to public office *in any election* unless such candidate shall have received a majority of the votes cast to fill such nomination or public office. In instances where no candidate shall have received a majority of the

votes cast, a runoff primary or election shall be held, between the two candidates receiving the highest number of votes. . . . Ga. Code Ann. § 34-1514 (Ga. Laws 1964, Extra. Sess., pp. 26, 174-75). (Emphasis supplied).[9]

The appellant suggests that this section, despite its broad and all-inclusive language, is not applicable to a runoff in the Governor's race. The language of the section simply does not permit such an arbitrary application or limitation. The intent evident from the language is that the provision be applied whenever and wherever it can be applied, by its terms. It has been stipulated by the Secretary of State that Section 34-1514 was applied to require a runoff on September 28, 1966, to select the gubernatorial nominee of the Georgia Democratic Party where no candidate received a majority in the first primary. (R. 141-42, 179). Since the language of the section in referring to "any primary" admittedly includes a gubernatorial primary, it is difficult to conceive that the legislature did not intend "any election" to have coverage equally as broad.

Furthermore, the circumstances under which the 1964 Election Code, including Section 34-1514, was adopted are of critical significance in resolving the legislative objective of the runoff provision.

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[9] The Georgia Election Code provides that as used in the Code the word "election" means "*any* general or special election and shall not include a primary," Ga. Code Ann. § 34-103(e) (Ga. Laws 1964, Extra. Sess., pp. 26, 29), and that the words "public office" include "*every* Federal, *State* and county *office* to which persons can be elected by a vote of the electors under the laws of this State," Ga. Code Ann. § 34-103(y) (Ga. Laws 1964, Extra. Sess., pp. 26, 31). (Emphasis supplied.) These provisions remove any doubt that Section 34-1514 was intended to apply to the gubernatorial race.

In March of 1964, Governor Sanders called the General Assembly to an Extraordinary Session beginning on May 4, 1964, for the purposes, among others, of enacting what is now the Election Code and of approving a new constitution to submit to the people. Ga. Acts 1964, Extra. Sess., pp. 1-2. At the same time that the Election Code was being considered, the General Assembly approved a proposed constitution.[10] Section 7 of Article 4 of this proposed constitution, which is quoted in full in Appendix *A*, abolished the antiquated method of having the legislature elect the Governor if no candidate receives a majority. It provided for a runoff which would "be considered as a part of the election" and which would be held at such time as provided by law. That election also required transmission of one set of the returns of the election of the Governor and other executive officers to the General Assembly in language very similar to the language of Paragraph III of Article V, Section 1 of the present Georgia Constitution.

The objective of the proposed Section 7 is unmistakable. Preserving the old form of having one set of

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[10] The proposed constitution was approved by both houses of the Georgia General Assembly on June 23, 1964. Record, p. 179, Fortson v. Toombs, 379 U.S. 621 (1965). The Senate voted 43 to 9, and the House voted 152 to 16, in favor of submitting the proposed constitution. Ga. General Assembly, Senate Journal, 1964 Extra. Session 790; Ga. General Assembly, House Journal, 1964 Extra. Session 1115.

The Election Code was passed by both houses of the General Assembly on June 22, 1964. The Senate voted 47 to 0, and the House voted 150 to 27, in favor of the Election Code. Ga. General Assembly, Senate Journal, 1964 Extra. Session 744; Ga. General Assembly, House Journal, 1964 Extra. Session 1088. The Governor signed the Election Code on June 24, 1964. Ga. Acts 1964, Extra. Sess., pp. 26, 220.

sealed election returns reviewed and approved by the General Assembly, the proposed constitution retained the requirement of a majority vote to elect and provided (1) that a runoff would be used in case no candidate received a majority, (2) that the runoff would be considered a part of the election, and (3) that a special election would be held if no candidate were elected in the election (as would occur, for example, if after the election and before the runoff, which would be considered part of the election under the proposed constitution, one or both of the two runoff candidates should die) or if the elected candidate died or withdrew.

These provisions of the proposed constitution correlate with Sections 34-1514 and 34-1515 of the Election Code, and show that these sections and other relevant provisions of the Election Code were enacted by the General Assembly at the 1964 Extraordinary Session to carry out the scheme for electing the Governor prescribed by the proposed constitution.[11]

When the Election Code was adopted, therefore, the General Assembly was not acting, presumptively or in fact, with reference to the invalid part of the present constitution which requires the General Assembly to choose the Governor if no candidate receives a majority. Moreover, without the invalid provision, the pres-

[11] Section 34-1515 provides as follows: Whenever any primary or election shall fail to fill a particular nomination or office and such failure cannot be cured by a runoff primary or election, or whenever any person elected to public office shall die or withdraw prior to taking office, then the authority, with whom the candidates for such nomination or office filed their notice of candidacy, shall thereupon call a special primary or election to fill such position. Ga. Code Ann. § 34-1515 (Ga. Laws 1964, Extra. Sess., pp. 26, 175).

ent constitution is very similar to the basic provisions of Section 7 of Article 4 of the proposed constitution.[12]

B. The Effectiveness of a Runoff in Concluding the Election Cannot Be Defeated by Write-In Votes.

The appellant has raised the question whether write-in voting would be allowed in a runoff. This is done in an attempt to cast doubt on the ability of a runoff to achieve the majority vote required by Georgia law, with the suggestion that election by the General Assembly is the only way to achieve that result.[13]

It is inherent in the nature of a runoff that it restricts the list of candidates in order to bring an election to a conclusion and yet have a selection by majority vote. A runoff is thus quite different from a "rerun" or a new election in which all of the same candidates and others may appear on the ballot.

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[12] The fate of the proposed constitution is a familiar story to this Court. On the day before the Extraordinary Session ended on June 25, 1964, the United States District Court for the Northern District of Georgia entered an order enjoining the submission of the proposed constitution to the people in the November, 1964 election. Part of this order which is not relevant here was changed on November 3, 1964. This Court noted probable jurisdiction on October 12, 1964, *Fortson* v. *Toombs*, 379 U.S. 809 (1964). The case was argued on November 18 and 19, 1964. In January, well after the November election, this Court vacated the District Court's order in relevant part and remanded the case. *Fortson* v. *Toombs*, 379 U.S. 621 (1965), *vacating and remanding an unreported order of the district court.* See *Toombs* v. *Fortson*, 205 F. Supp. 248 (N.D. Ga. 1962).

[13] The appellant could also have noted that the right of a legislator to respond "present" and refrain from voting could frustrate election by the General Assembly under the constitutional provision here involved which provides that "a majority of the members present shall be necessary to a choice." Ga. Const., art. V, § I, para. IV.

This is recognized in Section 34-1514 of the Georgia Election Code which states the requirement of a majority to elect and provides that the runoff shall be "between the two candidates receiving the highest number of votes" in the election which failed to produce the majority. Ga. Code Ann. § 34-1514 (Ga. Laws 1964, Extra. Sess., pp. 26, 174). The purpose of the statutory provision is to establish a practical and convenient method for obtaining a majority vote for one candidate. The language and logic of the runoff statute clearly excludes consideration of votes for any candidate other than the two who formerly received the highest number of votes. If Section 34-1514 were read to permit write-in voting for other candidates, it would not be "between the two candidates receiving the highest number of votes," *ibid.*, and there would be no way to be sure that the runoff would accomplish its intended result of producing a majority vote for one candidate. See *Cunningham* v. *Queen,* 96 S.W. 2d 798 (Ct. Civ. App. Tex. 1936), where the court, holding that write-in voting should not be recognized in a runoff primary, emphasized that

> Before a person is entitled to be voted for, for an office in the run-off primary, he must have been one of the two high candidates at the first primary. If this were not true, it is very likely that neither candidate would receive a majority. If voters were left free to write in the name of any person they might choose in the run-off primary, there could very easily, and probably would, not be a majority for any candidate in the second primary, and thus the requirements of the law, that before a candidate can become the party nominee he must have received a majority of the votes, would prevent the party from making a nomination. *Id.* at 800.

Even if merit could be found in the appellant's argument that Section 34-1514 is not applicable so as to require a runoff in this situation, that does not mean that resort must be had to the legislature in order to provide a Governor.[14] The policy of the State of Georgia as expressed in its Constitution and laws is for election by majority vote. This applies to the Governor as to all other elected officials. The Georgia constitutional provision here involved provides for completion of the election by the legislature if no candidate receives a majority in the election for Governor. If that provision is held invalid, the appellees are entitled to relief in a form most nearly in conformity with the valid policies of the state, *i.e.*, a runoff election. Machinery for runoffs is provided in Georgia law. A runoff has been held in the process of nominating one of the candidates for Governor this year. This Court can and should order the District Court, in the exercise of its equity powers and in order to provide full relief to appellees, to order a runoff election to be held between Maddox and Callaway at the earliest possible date and to make such additional parties as may be necessary to effectuate this order.[15]

In summary, therefore, it is evident that Georgia law provides a valid and convenient means of choosing a Governor. The District Court has retained juris-

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[14] As this Court has repeatedly recognized, the federal courts possess a wide range of equity powers in moulding their decrees. *Fortson* v. *Toombs*, 379 U.S. 621, 622 (1965).

[15] *Reynolds* v. *Sims*, 377 U.S. 533, 585-87 (1964); and see *Smiley* v. *Holm*, 283 U.S. 355, 374-75 (1932), in which this Court framed a decree requiring the at-large election of Congressmen in Minnesota where it found the existing apportionment act to be invalid.

diction of this case "for such other and further proceedings as may be deemed equitable and just." (R. 232). With the removal of the obstruction posed by the invalid part of Article V, Section I, Paragraph IV of the Georgia Constitution, the manner in which the Governor of Georgia must be elected is clearly delineated and can readily be provided for by this Court and the District Court on remand in steps voluntarily taken by the appellant, with Court approval, or ordered by the Court, to carry out the purposes of the provisions of Section 34-1514 affording a runoff.

III. REMEDIES REQUESTED TO DO JUSTICE UNDER PRESENT CIRCUMSTANCES.

The completion of the Georgia gubernatorial election, which is the function of the runoff, should proceed as rapidly as the mechanics—printing ballots, sending out absentee ballots and the like—will permit. The people of the State, as well as the candidates themselves and their organizations, should not be asked to "stand at the ready" any longer than absolutely necessary for the proper conduct of a runoff to complete the election. This is particularly significant under present circumstances since the newly elected General Assembly convenes on January 9, 1967 and, with a session of only forty-five days, must address itself promptly to a legislative program. Among the significant decisions which the new Governor must make and acts that he must perform early in his administration are the following:

(1) Propose to the General Assembly a budget of approximately 1.6 billion covering the operations of the State of Georgia for the next two fiscal years end-

ing June 30, 1969, a date more than half way through the term of the new Governor.

(2) Submit his legislative program to the General Assembly.

(3) Advise the General Assembly as to whether he will ask it to undertake consideration for reapportionment during the thirty-day regular session or will call a later special session for this purpose so as to provide action before May 1, 1967 as required in *Toombs* v. *Fortson,* 241 F. Supp. 65 (N.D. Ga. 1965).

(4) Select many important officials, including a Revenue Commissioner, a Budget Director, a director of the Department of Family and Children's Services, and two members of the Board of Regents.

(5) Undertake promptly the carrying out of the man other significant responsibilities of a Governor, including the selection of his own key staff members.

The effectiveness of the new Chief Executive's services to the State can be greatly impaired if he is retarded or delayed in taking office.

We are appreciative of the fact that our feeling of need for acting without delay has been shared by the Attorney General of Georgia as indicated not only in his written statements to this Court but also by his cooperation in moving the case as expeditiously as he feels possible. In his application to this Court for a stay he says:

> Appellant will and does move the Court to advance and expedite this case, including emergency session if the Court deems it necessary, so that the stay herein sought pending appeal will be of minimum duration, so that the appeal may be heard

and determined at the earliest possible moment, and so that the election of a Governor of Georgia may be accomplished by proper means in the first instance and at the earliest opportunity.

We join in this request to the Court and we respectfully note, with great appreciation, the arrangements made by the Court to consider this case with such unusual expedition.

In order to accomplish in a meaningful way the ends sought by the appellees on behalf of themselves and all eligible voters in Georgia, we submit that the practicalities of the situation require that this Court give such direction to the District Court as to permit it, with the cooperation that we feel confident the Secretary of State and the Attorney General will provide, to order that a runoff be conducted, at the earliest practicable date, confined to the two candidates receiving the highest number of votes in the election on November 8, 1966.

CONCLUSION

We respectfully ask the Court to do the following:

1. Affirm the judgment of the court below for the reasons set forth in the District Court's opinion and for the further reasons set forth in this brief.

2. To direct the District Court to order a runoff of the gubernatorial election confined to the two candidates receiving the highest number of votes in the election of November 8, 1966, to be held on the earliest practicable date, determined after conferring with the parties, and to add such parties, namely Ordinaries of the State as a class, as may be necessary to accomplish the relief.

3. To grant such other relief as is incidental to the foregoing.

Respectfully submitted,

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APPENDIX A

Georgia Constitutional Provision in Question

Paragraph IV of Article V, Section I of the Georgia Constitution provides:

> How returns published.—The members of each branch of the General Assembly shall convene in the Representative Hall, and the President of the Senate and Speaker of the House of Representatives shall open and publish the returns in the presence and under the direction of the General Assembly; and the person having the majority of the whole number of votes, shall be declared duly elected Governor of this State;

Ga. Const., Art. V, § I, para. IV.

Relevant Provisions of the Georgia Election Code

Section 34-103(e) and 34-103(y) of the Georgia Election Code provide:

> *Definition.* —The following words, when used in this Code, shall have the following meanings, unless otherwise clearly apparent from the context:
>
> . . . .
>
> (e) The word "election" shall mean any general or special election and shall not include a primary;
>
> . . . .
>
> (y) The words "public office" shall include every Federal, State and county office to which persons can be elected by a vote of the electors under the laws of this State;
>
> . . . .

Ga. Const., art. V, § I, para. IV.
Sess., pp. 26, 29, 31).

Section 34-1514 of the Georgia Election Code provides:

> *Majority vote required to nominate or elect; exception; runoff primary or election.*—No candidate shall be nominated for public office in any primary or

elected to public office in any election unless such candidate shall have received a majority of the votes cast to fill such nomination or public office. In instances where no candidate receives a majority of the votes cast, a runoff primary or election shall be held, between the two candidates receiving the highest number of votes, on the fourteenth day after the day of holding the first primary or election, unless such runoff date is postponed by court order. The candidate receiving a majority of the votes cast in such runoff primary or election to fill the nomination or public office he seeks shall be declared the winner. Only the electors entitled to vote in the first primary or election shall be entitled to vote in any runoff primary or election resulting therefrom; provided, however, that no elector shall vote in a runoff primary in violation of Section 34-624. The State executive committee of a political party holding a runoff primary in an area involving two or more counties shall make prior arrangement for financing the cost of holding same. The provisions of this Section shall not apply to candidates seeking party nomination for or election to the governing authority of a county during the year 1964, and such candidate shall be nominated in the manner prescribed by the rules of the county executive committee of his county in the case of a primary, and by the provisions of any local act establishing such governing authority in the case of an election; and this sentence shall be automatically repealed on January 1, 1965. Ga. Code Ann. § 34-1514 (Ga. Laws 1964, Extra. Sess., p. 26).

Proposed Constitution of Georgia of 1964

Section 7 of Article 4 of the Proposed Constitution of Georgia of 1964 provides:

SECTION 7.

ELECTIONS

Paragraph 1. Election of Executive Officers. The first election for Governor, Lieutenant Governor, Secretary of State, Attorney General, Comptroller General, Treasurer, State School Superintendent, Com-

missioner of Agriculture, and Commissioner of Labor under this Constitution shall be held at the time of the General Election in 1966 and quadrennially thereafter on the date fixed by law. All such officers shall be elected in the manner prescribed for the election of members of the General Assembly and such officers shall be installed in office at the next regular annual session of the General Assembly subsequent to their election.

Paragraph 2. Returns of Elections. The returns for every election of said officers shall be sealed by the managers, separately from other returns, and directed to the President of the Senate and Speaker of the House of Representatives, and transmitted to such person or authority as provided by law, who shall, without opening said returns, cause the same to be laid before the Senate on the day after the two houses shall have been organized, and they shall be transmitted by the Senate to the House of Representatives.

Paragraph 3. Publication of Returns. The members of both houses of the General Assembly shall convene in the Representative Hall, and the President of the Senate and the Speaker of the House of Representatives shall open and publish the returns under the direction of the General Assembly. The person having the majority of the whole number of votes shall be declared duly elected to each of said offices. Whenever no person is elected in the general election to fill any such office, or whenever any person elected shall die or withdraw prior to taking any such office, the Secretary of State shall call a special election, which shall be held not less than sixty nor more than one hundred twenty days from the date of any such event, to fill such position. The incumbent office shall continue to serve until his successor can be elected and qualified.

Paragraph 4. Runoffs. Whenever a runoff is required under this Constitution or under any valid law, the runoff shall be considered as a part of the election and may be held at such time after the date prescribed in this Constitution for the election as is fixed by law.

Ga. Laws 1964, Extra. Sess., pp. 234, 285-86.

APPENDIX B

1965 APPORTIONMENT OF HOUSE OF REPRESENTATIVES — SUMMARY DATA

	1965	1960
Number of Representatives	205	205
Total population	4,263,000	3,942,966
Average population per Representative	20,795	19,234
Smallest population represented by one Representative	11,550	12,131
Largest population represented by one Representative	30,180	23,860
Ratio of largest population per Representative to smallest population per Representative	2.61:1	1.97:1
Maximum deviation of population per Representative below average	44%	37%
Maximum deviation of population per Representative above average	45%	24%
Minimum percentage of population represented by a majority (103) of the Representatives	41.2%	42.3%
Number of Representatives representing the 20% of population residing in least populous districts	56	54
Number of Representatives representing the 20% of population residing in most populous districts	30	34
Percentage of Representatives from districts deviating 20% or more from the average	45%	37%
Percentage of Representatives from districts deviating 15% or more from the average	55%	58%
Percentage of Representatives from districts deviating 10% or more from the average	74%	70%

NOTE:

1960 population data is based on the 1960 U. S. census.

1965 population data is based on estimates compiled by the Georgia Department of Public Health.

APPENDIX B, TABLE I

District Number	Counties	Number of Representatives	Average Population Per Representative			Total Population		
			Estimated 1965	Actual 1960	Increase (Decrease)	Estimated 1965	Actual 1960	Increase (Decrease)
Districts of 12,500 or less								
89	Decatur	2	11,550	12,601	(1,051)	23,100	25,203	(2,103)
56	Webster-Stewart-Chattahoochee	1	12,200*	23,487	(11,287)	12,200*	23,487	(11,287)
		3				35,300	48,690	(13,390)
Districts of 12,500 - 13,000								
64	Bulloch	2	12,750	12,131	619	25,500	24,263	1,237
68	Sumpter	2	12,800	12,326	474	25,600	24,652	948
		4				51,100	48,915	2,185
Districts of 13,000 - 13,500								
	None							
Districts of 13,500 - 14,000								
61	Quitman-Randolph	1	13,600	13,510	90	13,600	13,510	90
18	Franklin	1	13,700	13,274	426	13,700	13,274	426
86	Early	1	13,700	13,151	549	13,700	13,151	549
21	Paulding	1	13,900	13,101	799	13,900	13,101	799
72	Ben Hill	1	13,900	13,633	267	13,900	13,633	267
		5				68,800	66,669	2,131
Districts of 14,000 - 14,500								
4	Fannin	1	14,000	13,620	380	14,000	13,620	380
48	Johnson-Washington	2	14,000	13,475	525	28,000	26,951	1,049
74	Appling	1	14,000	13,246	754	14,000	13,246	754
57	Taylor-Marion	1	14,100	13,788	312	14,100	13,788	312
63	Candler-Evans	1	14,300	13,624	676	14,300	13,624	676
87	Miller-Seminole	1	14,400	13,710	690	14,400	13,710	690
		7				98,800	94,939	3,861

* The 1965 estimate does not include military population.

District Number	Counties	Number of Representatives	Average Population Per Representative			Total Population		
			Estimated 1965	Actual 1960	Increase (Decrease)	Estimated 1965	Actual 1960	Increase (Decrease)
Districts of 14,500 - 15,000								
5	Union-Lumpkin	1	14,600	13,751	849	14,600	13,751	849
30	Oconee-Oglethorpe	1	14,700	14,230	470	14,700	14,230	470
41	Columbia	1	14,700	13,423	1,277	14,700	13,423	1,277
20	Polk	2	14,850	14,007	843	29,700	28,015	1,685
		5				73,700	69,419	4,281
Districts of 15,000 - 15,500								
26	Haralson	1	15,100	14,543	557	15,100	14,543	557
46	Jasper-Jones	1	15,100	14,603	497	15,100	14,603	497
69	Crisp-Dooly	2	15,100	14,621	479	30,200	29,242	958
23	Barrow	1	15,200	14,485	715	15,200	14,485	715
55	Screven	1	15,300	14,919	381	15,300	14,919	381
		6				90,900	87,792	3,108
Districts of 15,500 - 16,000								
50	Burke-Jenkins	2	15,500	14,872	628	31,000	29,744	1,256
19	Hart	1	15,700	15,229	471	15,700	15,229	471
99	Brooks	1	15,700	15,292	408	15,700	15,292	408
		4				62,400	60,265	2,135
Districts of 16,000 - 16,500								
95	Lowndes	3	16,033	16,423	(390)	48,100	49,270	(1,170)
14	Bartow	2	16,400	14,133	2,267	32,800	28,267	4,533
84	Pierce-Brantley	1	16,400	15,569	831	16,400	15,569	831
		6				97,300	93,106	4,194

District Number	Counties	Number of Representatives	Average Population Per Representative			Total Population		
			Estimated 1965	Actual 1960	Increase (Decrease)	Estimated 1965	Actual 1960	Increase (Decrease)
Districts of 16,500 - 17,000								
98	Charlton-Camden	1	16,500	15,288	1,212	16,500	15,288	1,212
94	Colquitt	2	16,550	17,024	(474)	33,100	34,048	(948)
60	Laurens	2	16,750	16,156	594	33,500	32,313	1,187
78	Clay-Calhoun-Baker	1	16,800	16,435	365	16,800	16,435	365
10	Dawson-Forsyth	1	16,900	15,760	1,140	16,900	15,760	1,140
		7				116,800	113,844	2,956
Districts of 17,000 - 17,500								
58	Schley-Macon	1	17,000	16,426	574	17,000	16,426	574
70	Dodge	1	17,100	16,483	617	17,100	16,483	617
65	Effingham-Bryan	1	17,300	16,370	930	17,300	16,370	930
		3				51,400	49,279	2,121
Districts of 17,500 - 18,000								
83	Ware	2	17,550	17,109	441	35,100	34,219	881
47	Baldwin	2	17,600	17,032	568	35,200	34,064	1,136
80	Worth	1	17,600	16,682	918	17,600	16,682	918
62	Toombs	1	17,900	16,837	1,063	17,900	16,837	1,063
16	Hall	3	17,933	16,579	1,354	53,800	49,739	4,061
		9				159,600	151,541	8,059
Districts of 18,000 - 18,500								
27	Douglas	1	18,000	16,741	1,259	18,000	16,741	1,259
44	Pike-Lamar	1	18,000	17,378	622	18,000	17,378	622
49	Jefferson	1	18,100	17,468	632	18,100	17,468	632
53	Twiggs-Wilkinson	1	18,200	17,185	1,015	18,200	17,185	1,015
33	Heard-Coweta	2	18,250	17,113	1,137	36,500	34,226	2,274

District Number	Counties	Number of Representatives	Average Population Per Representative			Total Population		
			Estimated 1965	Actual 1960	Increase (Decrease)	Estimated 1965	Actual 1960	Increase (Decrease)
Districts of 18,000 - 18,500 (Continued)								
61	Treutlen-Wheeler-Montgomery	1	18,300	17,500	800	18,300	17,500	800
17	Banks-Madison	1	18,400	17,743	657	18,400	17,743	657
91	Jeff Davis-Bacon	1	18,400	17,273	1,127	18,400	17,273	1,127
92	Thomas	2	18,450	17,159	1,291	36,900	34,319	2,581
		11				200,800	189,833	10,967
Districts of 18,500 - 19,000								
25	Elbert	1	18,500	17,835	665	18,500	17,835	665
39	Hancock-Putnam	1	18,500	17,777	723	18,500	17,777	723
81	Turner-Irwin	1	18,500	17,650	850	18,500	17,650	850
54	Emanuel	1	18,700	17,815	885	18,700	17,815	885
71	Pulaski-Bleckley	1	18,700	17,846	854	18,700	17,846	854
9	Gilmer-Pickens	1	18,800	17,825	975	18,800	17,825	975
90	Grady	1	18,800	18,015	785	18,800	18,015	785
100	Harris-Talbot	1	18,800	18,294	506	18,800	18,294	506
36	Henry	1	18,900	17,619	1,281	18,900	17,619	1,281
		9				168,200	160,676	7,524
Districts of 19,000 - 19,500								
12	Stephens	1	19,300	18,391	909	19,300	18,391	909
11	Habersham	1	19,400	18,116	1,284	19,400	18,116	1,284
34	Spalding	2	19,400	17,702	1,698	38,800	35,404	3,396
77	Wayne	1	19,400	17,921	1,479	19,400	17,921	1,479
		5				96,900	89,832	7,068

District Number	Counties	Number of Representatives	Average Population Per Representative			Total Population		
			Estimated 1965	Actual 1960	Increase (Decrease)	Estimated 1965	Actual 1960	Increase (Decrease)
Districts of 19,500 - 20,000								
24	Jackson	1	19,500	18,499	1,001	19,500	18,499	1,001
76	Liberty-McIntosh	1	19,500	20,851	(1,351)	19,500	20,851	(1,351)
32	Carroll	2	19,550	18,225	1,325	39,100	36,451	2,649
67	Terrell-Lee	1	19,800	18,946	854	19,800	18,946	854
		5				97,900	94,747	3,153
Districts of 20,000 - 20,500								
1	Dade-Walker	3	20,000	17,976	2,024	60,000	53,930	6,070
6	Towns-Rabun-White	1	20,000	18,929	1,071	20,000	18,929	1,071
45	Butts-Monroe	1	20,000	19,471	529	20,000	19,471	529
43	Meriwether	1	20,200	19,756	444	20,200	19,756	444
73	Wilcox-Telfair	1	20,400	19,620	780	20,400	19,620	780
		7				140,600	131,706	8,894
Districts of 20,500 - 21,000								
8	Gordon	1	20,500	19,228	1,272	20,500	19,228	1,272
31	Taliaferro-Wilkes-Lincoln	1	20,600	20,237	363	20,600	20,237	363
52	Crawford-Peach	1	20,700	19,662	1,038	20,700	19,662	1,038
3	Whitfield-Murray	3	20,833	17,518	3,315	62,500	52,556	9,944
79	Dougherty	4	20,850	18,920	1,930	83,400	75,680	7,720
113-116	Chatham	9	20,889	20,922	(33)	188,000	188,299	(299)
88	Mitchell	1	20,900	19,652	1,248	20,900	19,652	1,248
		20				416,600	395,314	21,286

District Number	Counties	Number of Representatives	Average Population Per Representative			Total Population		
			Estimated 1965	Actual 1960	Increase (Decrease)	Estimated 1965	Actual 1960	Increase (Decrease)
Districts of 21,000 - 21,500								
7	Chattooga	1	21,100	19,954	1,146	21,100	19,954	1,146
75	Tattnall-Long	1	21,100	19,711	1,389	21,100	19,711	1,389
97	Lanier-Atkinson-Clinch-Echols	1	21,200	19,706	1,494	21,200	19,706	1,494
		3				63,400	59,371	4,029
Districts of 21,500 - 22,000								
28	Walton	1	21,600	20,481	1,119	21,600	20,481	1,119
59	Houston	2	21,700	19,577	2,123	43,400	39,154	4,246
110-112	Muscogee	7	21,871	22,660	(789)	153,100	158,623	(5,523)
		10				218,100	218,258	(158)
Districts of 22,000 - 22,500								
38	Greene-Morgan	1	22,100	21,473	627	22,100	21,473	627
37	Newton	1	22,200	20,991	1,209	22,200	20,991	1,209
		2				44,300	42,464	1,836
Districts of 22,500 - 23,000								
2	Catoosa	1	22,800	21,101	1,699	22,800	21,101	1,699
104-106	Richmond	6	22,800	22,600	200	136,800	135,601	1,199
		7				159,600	156,702	2,898
Districts of 23,000 - 23,500								
42	Troup	2	23,100	23,594	(494)	46,200	47,189	(989)
29	Clarke	2	23,250	22,681	569	46,500	45,363	1,137
82	Coffee	1	23,300	21,953	1,347	23,300	21,953	1,347
		5				116,000	114,505	1,495

District Number	Counties	Number of Representatives	Average Population Per Representative			Total Population		
			Estimated 1965	Actual 1960	Increase (Decrease)	Estimated 1965	Actual 1960	Increase (Decrease)
Districts of 23,500 - 24,000								
13	Floyd	3	23,567	23,043	524	70,700	69,130	1,570
40	McDuffie-Glascock-Warren	1	23,700	22,659	1,041	23,700	22,659	1,041
		4				94,400	91,789	2,611
Districts of 24,000 - 24,500								
	None							
Districts of 24,500 - 25,000								
15	Cherokee	1	24,500	23,001	1,499	24,500	23,001	1,499
107-109	Bibb	6	24,600	23,541	1,059	147,600	141,249	6,351
51	Upson	1	24,800	23,800	1,000	24,800	23,800	1,000
35	Fayette-Clayton	3	24,867	18,188	6,679	74,600	54,564	20,036
120—3 121—3 122—3 123—3 124—3 125—3 126—3 127—3	Fulton (21 elected by District—3 in County at large)	24	24,971	23,180	1,791	599,300	556,326	42,974
		35				870,800	798,940	71,860
Districts of 25,000 - 25,500								
93	Tift	1	25,100	23,487	1,613	25,100	23,487	1,613
96	Berrien-Cook	1	25,100	23,860	1,240	25,100	23,860	1,240
		2				50,200	47,347	2,853

District Number	Counties	Number of Representatives	Average Population Per Representative			Total Population		
			Estimated 1965	Actual 1960	Increase (Decrease)	Estimated 1965	Actual 1960	Increase (Decrease)
Districts of 25,500 or more								
85	Glynn	2	25,900	20,977	4,923	51,800	41,954	9,846
22	Gwinnett	2	27,300	21,770	5,530	54,600	43,541	11,059
117—4	DeKalb	12	30,150	22,280	7,870	361,800	267,354	94,446
118—4	Rockdale							
119—4		5	30,180	22,831	7,349	150,900	114,174	36,726
101-103	Cobb	21				619,100	467,023	152,077
		205				4,263,000	3,942,966	320,034

District Number	Number of Representatives	Percentage of Population Per Representative in District Below or Above Average		Increase (Decrease)
		1965	1960	
Districts of 12,500 or less				
	2	—44%	—35%	(9%)
89	1	—41*	+23	(64)
56	3			
Districts of 12,500 - 13,000				
	2	—39	—37	(2)
64	2	—38	—36	(2)
68	4			
Districts of 13,000 - 13,500				
None				
Districts of 13,500 - 14,000				
61	1	—35	—30	(5)
18	1	—34	—31	(3)
86	1	—34	—32	(2)
21	1	—33	—32	(1)
72	1	—33	—29	(4)
	5			
Districts of 14,000 - 14,500				
4	1	—33	—29	(4)
48	2	—33	—30	(3)
74	1	—33	—31	(2)
57	1	—32	—28	(4)
63	1	—31	—29	(2)
87	1	—31	—29	(2)
	7			

* The 1965 estimate does not include military population.

APPENDIX B, TABLE II

District Number	Number of Representatives	Percentage of Population Per Representative in District Below or Above Average 1965	1960	Increase (Decrease)
Districts of 14,500 - 15,000				
5	1	—30%	—29%	(1%)
30	1	—29	—26	(3)
41	1	—29	—30	1
20	2	—29	—27	(2)
	5			
Districts of 15,000 - 15,500				
26	1	—27	—24	(3)
46	1	—27	—24	(3)
69	2	—27	—24	(3)
23	1	—27	—25	(2)
55	1	—26	—22	(4)
	6			
Districts of 15,500 - 16,000				
50	2	—25	—25	.....
19	1	—25	—21	(4)
99	1	—25	—21	(4)
	4			
Districts of 16,000 - 16,500				
95	3	—23	—15	(8)
14	2	—21	—27	6
84	1	—21	—19	(2)
	6			

District Number	Number of Representatives	Percentage of Population Per Representative in District Below or Above Average 1965	1960	Increase (Decrease)
Districts of 16,500 - 17,000				
98	1	—21%	—21%	—%
94	2	—20	—12	(8)
60	2	—19	—16	(3)
78	1	—19	—15	(4)
10	1	—19	—18	(1)
	7			
Districts of 17,000 - 17,500				
58	1	—18	—15	(3)
70	1	—18	—14	(4)
65	1	—17	—15	(2)
	3			
Districts of 17,500 - 18,000				
83	2	—16	—11	(5)
47	2	—15	—12	(3)
80	1	—15	—13	(2)
62	1	—14	—13	(1)
16	3	—14	—14	—
	9			
Districts of 18,000 - 18,500				
27	1	—13	—13	—
44	1	—13	—10	(3)
49	1	—13	— 9	(4)
53	1	—12	—11	(1)
33	2	—12	—11	(1)

District Number	Number of Representatives	Percentage of Population Per Representative in District Below or Above Average 1965	1960	Increase (Decrease)
Districts of 18,000 - 18,500 (Continued)				
61	1	—12%	— 9%	(3%)
17	1	—12	— 8	(4)
91	1	—12	—10	(2)
92	2	—11	—11	—
	11			
Districts of 18,500 - 19,000				
25	1	—11	— 7	(4)
39	1	—11	— 8	(3)
81	1	—11	— 8	(3)
54	1	—10	— 7	(3)
71	1	—10	— 7	(3)
9	1	—10	— 7	(3)
90	1	—10	— 6	(4)
100	1	—10	— 5	(5)
36	1	— 9	— 8	(1)
	9			
Districts of 19,000 - 19,500				
12	1	— 7	— 4	(3)
11	1	— 7	— 6	(1)
34	2	— 7	— 8	1
77	1	— 7	— 7	—
	5			

District Number	Number of Representatives	Percentage of Population Per Representative in District Below or Above Average 1965	1960	Increase (Decrease)
Districts of 19,500 - 20,000				
24	1	—6%	—4%	(2%)
76	1	—6	+8	(14)
32	2	—6	—5	(1)
67	1	—5	—2	(3)
	5			
Districts of 20,000 - 20,500				
1	3	—4	—7	3
6	1	—4	—2	(2)
45	1	—4	+1	(5)
43	1	—3	+3	(6)
73	1	—2	+2	(4)
	7			
Districts of 20,500 - 21,000				
8	1	—1	—	(1)
31	1	—1	+5	(6)
52	1	—	+2	(2)
3	3	—	—9	9
79	4	—	—2	2
113-116	9	—	+9	(9)
88	1	+1	+2	(1)
	20			

District Number	Number of Representatives	Percentage of Population Per Representative in District Below or Above Average 1965	1960	Increase (Decrease)
Districts of 21,000 - 21,500				
7	1	+ 1%	+ 4%	(3%)
75	1	+ 1	+ 3	(2)
97	1	+ 2	+ 2	—
	3			
Districts of 21,500 - 22,000				
28	1	+ 4	+ 7	(3)
59	2	+ 4	+ 2	2
110-112	7	+ 5	+18	(13)
	10			
Districts of 22,000 - 22,500				
38	1	+ 6	+12	(6)
37	1	+ 7	+ 9	(2)
	2			
Districts of 22,500 - 23,000				
2	1	+10	+10	—
104-106	6	+10	+18	(8)
	7			
Districts of 23,000 - 23,500				
42	2	+11	+23	(12)
29	2	+12	+19	(7)
82	1	+12	+14	(2)
	5			

District Number	Number of Representatives	Percentage of Population Per Representative in District Below or Above Average 1965	1960	Increase (Decrease)
Districts of 23,500 - 24,000				
13	3	+13%	+20%	(7%)
40	1	+14	+18	(4)
	4			
Districts of 24,000 - 24,500				
None				
Districts of 24,500 - 25,000				
15	1	+18	+20	(2)
107-109	6	+18	+22	(4)
51	1	+19	+24	(5)
35	3	+20	— 5	25
120—3 121—3 122—3 123—3 124—3 125—3 126—3 127—3	24	+20	+21	(1)
	35			
Districts of 25,000 - 25,500				
93	1	+21	+22	(1)
96	1	+21	+24	(3)
	2			

District Number	Number of Representatives	Percentage of Population Per Representative in District Below or Above Average 1965	1960	Increase (Decrease)
Districts of 25,500 or more				
85	2	+25%	+ 9%	16%
22	2	+31	+13	18
117—4 118—4 119—4	12	+45	+16	29
101-103	5	+45	+19	26
	21			
	205			

1965 APPORTIONMENT OF SENATE — SUMMARY DATA

	1965	1960
Number of Senate Districts	54	54
Total population	4,263,000	3,942,966
Average population per District	78,944	73,018
Smallest District represented by one Senator	62,667	52,572
Largest District represented by one Senator	116,800	95,032
Ratio of population of largest District to smallest District	1.86:1	1.81:1
Maximum deviation of population per Senator above average	48%	30%
Maximum deviation of population per Senator below average	21%	28%
Minimum percentage of population represented by a majority (28 out of 54 or 51.9%) of the Senators	46.6%	49%
Number of Senators representing the 20% of population residing in least populous districts	13	12
Number of Senators representing the 20% of population residing in most populous districts	9	9
Number of districts (by percentage) deviating 20% or more from the average	15%	4%
Number of districts (by percentage) deviating 15% or more from the average	19%	11%
Number of districts (by percentage) deviating 10% or more from the average	33%	31%

NOTES:

(1) 1960 population data is based on the 1960 U.S. census.

1965 population data is based on estimates compiled by the Georgia Department of Public Health.

(2) For 1965, in the case of a county having more than one district, the amount given as population per district is the population of that county divided by the number of districts in the county.

APPENDIX B, TABLE III

District Numbers	Counties	Number of Senators	Total Population			Average Population Per Senator			Percentage of Population Per Senator Below or Above Average		
			Estimate 1965	Actual 1960	Increase (Decrease)	Estimate 1965	Actual 1960	Increase (Decrease)	1965	1960	Increase (Decrease)
Districts of 66,000 or below											
1, 2, 3	Chatham	3	188,000	188,299	(299)	62,667	62,766	(99)	—21%	—15%	(6%)
14	Chattahoochee-Stewart-Quitman, Randolph-Webster-Terrell, Sumpter*	1	64,700	74,533	(9,833)	64,700	74,533	(9,833)	—18	1	(19)
		4	252,700	262,832	(10,132)						
Districts of 66,000 - 68,000											
47	Elbert-Franklin-Hart-Stephens	1	67,200	64,729	2,471	67,200	64,729	2,471	—15	—11	(4)
21	Burke-Emanuel-Jenkins-Jefferson	1	67,800	65,027	2,773	67,800	65,027	2,773	—14	—11	(3)
		2	135,000	129,756	5,244						
Districts of 68,000 - 70,000											
11	Calhoun-Clay-Decatur-Baker, Miller-Seminole-Early	1	68,000	68,499	(499)	68,000	68,499	(499)	—14	— 7	(7)
19	Bleckley-Pulaski-Wilcox-Dodge, Telfair-Dooly	1	68,000	65,423	2,577	68,000	65,423	2,577	—14	—11	(3)
22, 23	Richmond	2	136,800	135,601	1,199	68,400	67,800	600	—13	— 8	(5)
45	Jasper-Morgan-Newton-Putnam, Walton	1	68,900	65,693	3,207	68,900	65,693	3,207	—13	—10	(3)
		5	341,700	335,216	6,484						
Districts of 70,000 - 72,000											
24	Columbia-Glascock-Lincoln-Wilkes, Taliaferro-Warren-McDuffie, Greene	1	70,400	67,512	2,888	70,400	67,512	2,888	—11	— 8	(3)
52	Floyd	1	70,700	69,130	1,570	70,700	69,130	1,570	—10	— 5	(5)
29	Heard-Troup-Meriwether	1	71,900	72,278	(378)	71,900	72,278	(378)	— 9	— 1	(8)
		3	213,000	208,920	4,080						

*The 1965 estimate does not include military population.

District Numbers	Counties	Number of Senators	Total Population			Average Population Per Senator			Percentage of Population Per Senator Below or Above Average		
			Estimate 1965	Actual 1960	Increase (Decrease)	Estimate 1965	Actual 1960	Increase (Decrease)	1965	1960	Increase (Decrease)
Districts of 72,000 - 74,000											
7	Clinch-Coffee-Atkinson-Ware	1	72,200	68,903	3,297	72,200	68,903	3,297	— 9%	— 6%	(3%)
18	Crawford-Houston-Peach-Twiggs	1	72,600	66,751	5,849	72,600	66,751	5,849	— 8	— 9	1
46	Clarke-Oconee-Oglethorpe-Madison	1	72,900	70,839	2,061	72,900	70,839	2,061	— 8	— 3	(5)
26, 27	Bibb	2	147,600	141,249	6,351	73,800	70,624	3,176	— 7	— 3	(4)
9	Brooks-Colquitt-Tift	1	73,900	72,827	1,073	73,900	72,827	1,073	— 6	.....	(6)
		6	439,200	420,569	18,631						
Districts of 74,000 - 76,000											
17	Harris-Talbot-Taylor-Marion-Schley, Macon-Upson	1	74,700	72,300	2,400	74,700	72,300	2,400	— 5	— 1	(4)
13	Lee-Worth-Irwin-Turner-Crisp-Ben Hill	1	74,900	71,937	2,963	74,900	71,937	2,963	— 5	— 1	(4)
32, 33	Cobb	2	150,900	114,174	36,726	75,450	57,087	18,363	— 4	—22	18
		4	300,500	258,411	42,089						
Districts of 76,000 - 78,000											
15, 16	Muscogee	2	153,100	158,623	(5,523)	76,550	79,311	(2,761)	— 3	9	(12)
10	Grady-Thomas-Mitchell	1	76,600	71,986	4,614	76,600	71,986	4,614	— 3	— 1	(2)
31	Polk-Paulding-Haralson-Douglas	1	76,700	72,400	4,300	76,700	72,400	4,300	— 3	— 1	(2)
28	Spalding-Butts-Pike-Lamar-Monroe	1	76,800	72,253	4,547	76,800	72,253	4,547	— 3	— 1	(2)
51	Bartow-Gordon-Cherokee	1	77,800	70,496	7,304	77,800	70,496	7,304	— 1	— 3	2
		6	461,000	445,758	15,242						

District Numbers	Counties	Number of Senators	Total Population			Average Population Per Senator			Percentage of Population Per Senator Below or Above Average		
			Estimate 1965	Actual 1960	Increase (Decrease)	Estimate 1965	Actual 1960	Increase (Decrease)	1965	1960	Increase (Decrease)
Districts of 78,000 - 80,000											
20	Laurens-Johnson-Treutlen-Wheeler, Montgomery-Toombs	1	78,100	74,698	3,402	78,100	74,698	3,402	— 1%	+ 2%	(3%)
49	Hall-Forsyth-Dawson-Lumpkin	1	78,400	72,740	5,660	78,400	72,740	5,660	— 1	.....	(1)
30	Carroll-Coweta-Fayette	1	78,700	73,543	5,157	78,700	73,543	5,157	.....	+ 1	(1)
50	Fannin-Union-Towns-White-Rabun, Habersham-Gilmer-Pickens	1	79,100	75,000	4,100	79,100	75,000	4,100	.....	+ 3	(3)
		4	314,300	295,981	18,319						
Districts of 80,000 - 82,000											
8	Lowndes-Lanier-Berrien-Cook-Echols	1	80,600	80,103	497	80,600	80,103	497	+ 2	+10	(8)
53	Dade-Walker-Chattooga	1	81,100	73,884	7,216	81,100	73,884	7,216	+ 3	+ 1	2
		2	161,700	153,987	7,713						
Districts of 82,000 - 84,000											
5	Bryan-Long-Liberty-McIntosh-Glynn	1	82,100	72,905	9,195	82,100	72,905	9,195	+ 4	.....	4
4	Bulloch-Candler-Screven-Evans, Tattnall-Effingham	1	82,700	78,787	3,913	82,700	78,787	3,913	+ 5	+ 8	(3)
12	Dougherty	1	83,400	75,680	7,720	83,400	75,680	7,720	+ 6	+ 3	3
25	Baldwin-Jones-Hancock-Washington, Wilkinson	1	83,700	80,664	3,036	83,700	80,664	3,036	+ 6	+10	(4)
		4	331,900	308,036	23,864						

District Numbers	Counties	Number of Senators	Total Population Estimate 1965	Total Population Actual 1960	Total Population Increase (Decrease)	Average Population Per Senator Estimate 1965	Average Population Per Senator Actual 1960	Average Population Per Senator Increase (Decrease)	Percentage of Population Per Senator Below or Above Average 1965	Percentage of Population Per Senator Below or Above Average 1960	Percentage of Population Per Senator Below or Above Average Increase (Decrease)
Districts of 84,000 - 86,000											
6	Camden-Charlton-Brantley-Pierce, Wayne-Bacon-Appling-Jeff Davis	1	84,700	79,297	5,403	84,700	79,297	5,403	+ 7%	+ 9%	(2%)
54	Catoosa-Murray-Whitfield	1	85,300	73,657	11,643	85,300	73,657	11,643	+ 8	+ 1	7
34, 35, 36, 37, 38, 39, 40	Fulton	7	599,300	556,186	43,114	85,614	79,455	6,159	+ 8	+ 6	2
		9	769,300	709,140	60,160						
Districts of 86,000 or more											
48	Banks-Jackson-Barrow-Gwinnett	1	96,000	83,022	12,978	96,000	83,022	12,978	+22	+14	8
44	Clayton-Henry-Rockdale	1	96,300	74,556	21,744	96,300	74,556	21,744	+22	+ 2	20
41, 42, 43	DeKalb	3	350,400	256,782	93,618	116,800	85,594	31,206	+48	+16	32
		5	542,700	414,360	128,340						
		54	4,263,000	3,942,966	320,034						

APPENDIX C

ELECTION OF GOVERNOR BY LEGISLATURE

The following table compares the candidates' popular vote totals and percentages in the general election for Governor with their totals and percentages if the election were sent to the General Assembly and if each member of the Assembly were to cast his vote for the candidate receiving the most popular votes in his district.

	Popular Vote Recv'd	% of Popular Vote	House	% of House	Senate	% of Senate	Totals in General Assembly	% of Total
Callaway	449,894	47.07%	95	46.34%	25	46.30%	120	46.33%
Maddox	448,044	46.88%	110	53.66%	29	53.70%	139	53.67%
Arnall	57,832	6.05%	0	0	0	0	0	0

NOTES:

(1) Popular vote totals were based on unofficial returns compiled by News Election Service, Associated Press, and United Press International. A breakdown on a district by district basis is not included in the appendices because the pertinent figures on a county by county basis are included in the record and also because of the very limited amount of time available for furnishing this brief to the Court.

(2) Returns were not available for each Senatorial District. Therefore, if a county had more than one Senator, all Senate votes in that county were given to the candidate receiving a majority in the county.